

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

The People of the State of Illinois, ex	:	
rel. Lisa Madigan, Attorney General of	:	
the State of Illinois	:	
	:	Docket No. 15-0487
Petition to Approve an Illinois Energy	:	
Efficiency Policy Manual	:	

**BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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ATTACHMENTS

Attachment A: Staff Recommended Revisions to the ALJPO

Attachment B: Staff Recommended Policy Manual dated December 4, 2015

Attachment C: Staff Recommended Revisions to the ALJPO Policy Manual

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Brief on Exceptions (“BOE”) in the instant proceeding.

I. INTRODUCTION

On November 24, 2015, the Administrative Law Judge (“ALJ”) issued the Proposed Order (“ALJPO”). Staff’s proposed modifications and revisions to the ALJPO are shown in legislative format in Attachment A to this BOE. The Policy Manual that Staff recommends the Commission adopt is attached to this BOE as Attachment B, and Staff’s proposed modifications and revisions to the Policy Manual attached to the ALJPO (“ALJPO Policy Manual”) are shown in legislative format in Attachment C to this BOE.

II. ARGUMENT AND EXCEPTIONS

A. Exception No. 1: Staff's Proposed Modifications Should be Adopted

The ALJPO incorrectly adopts the Policy Manual filed as AG Exhibit A with only two minor changes, as reflected in the ALJPO Policy Manual. (ALJPO, 15-16.) The Commission should adopt the Policy Manual filed as Attachment B to this BOE. Attachment B consists of an amended version of the proposed Policy Manual Staff previously filed as Staff Exhibit A; Staff has amended Exhibit A by removing language changes Staff had previously proposed with respect to Sections 2.1 and 2.3 (Staff Ex. B, 8) and Section 3.4 (Staff Ex. B, 12), but that Staff has subsequently withdrawn. As explained in Staff's Verified Initial Comments and Objections to the Illinois Energy Efficiency Policy Manual Version 1.0 ("Staff Initial Comments"), Staff believes it will best serve all parties to have the Commission clarify in this proceeding any areas of the Policy Manual that are unclear. (Staff Initial Comments, 2-3.)

The Policy Manual filed in this proceeding as AG Exhibit A, which is primarily reflected in the ALJPO Policy Manual, requires modification as proposed by Staff in order to increase clarity and certainty for all parties and reduce litigation before the Commission in future proceedings. (Staff Initial Comments, 24, 27, 39.) Furthermore, there are policies addressed in the ALJPO Policy Manual which Staff believes deviate substantially from past Commission Orders, such as the adjustable savings goal policies addressed below. (Staff Initial Comments, 22-29.) There is insufficient justification or support in the record for these departures from past Commission Orders. Finally, corrections are necessary in order to ensure key policies (see Staff Initial Comments, 35, 41-42; Staff Reply Comments, 23-24) described support the Commission's stated goal of the Policy

Manual, which is “to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.” Northern Illinois Gas Co. d/b/a Nicor Gas Co., ICC Final Order Docket No. 13-0549, 57-58 (May 20, 2014).

For the sake of brevity, Staff will not reiterate all the arguments already made in its Verified Comments filed in this proceeding. Instead, Staff incorporates herein by reference Staff’s arguments made in its Initial Comments and Reply Comments filed in this proceeding and respectfully requests the Commission carefully consider Staff’s arguments and adopt Staff’s positions with respect to all issues as reflected in the Policy Manual dated December 4, 2015 filed as Attachment B to this Staff BOE. (See Staff Initial Comments, 2-42; Staff Reply Comments, 4-25.)

While Staff will not reiterate all of its arguments, the Commission should be aware of one potential policy inconsistency resulting from differences between the determinations in the ALJPO in this proceeding and determinations in the ALJPO in ICC Docket No. 15-0541. In ICC Docket No. 15-0541, the ALJPO approves the Illinois Power Agency (“IPA”) submitted Procurement Plan which contains the following provisions concerning the Section 16-111.5B of the Illinois Public Utilities Act (“Act”) energy efficiency programs (often referred to as “IPA programs”):

Deeming should be permitted for the Section 16-111.5B EE programs just as it is for the Section 8-103 EE programs. Annual updates to the deemed IL-TRM for EE and NTG ratio values should occur for these Section 16-111.5B programs. As a result, reasonable changes to the vendors’ savings goals and/or cost structure are permitted during contract negotiations based in part on these updates to the IL-TRM and NTG. Multi-year contracts should be constructed to re-negotiate savings calculations based on **annual** IL-TRM and **NTG updates** and should leave open the possibility for utilities to update savings calculations and contract terms based in part on IL-TRM updates or errata and NTG updates.

Illinois Power Agency, ICC Docket No. 15-0541, ALJPO, 35-36 (November 13, 2015)

("IPA 2016 Procurement Plan ALJPO") (emphasis added). The Policy Manual adopted by the ALJPO in this proceeding states:

Program Administrator and/or IPA annual energy savings goals will be adjusted to align them with changes to IL-TRM values.

In addition, Program Administrator and/or IPA annual energy savings goals will be adjusted to align them with the Evaluator's recommended Net-to-Gross values for the entire Plan period prior to the start of the first Plan Year of an approved Plan or Section 16-111.5B Program.

(ALJPO Policy Manual, 17.) Thus, if the Commission approves both the IPA 2016 Procurement Plan ALJPO and the Policy Manual ALJPO, the Commission will approve both *annual* net-to-gross ("NTG") based adjustments to the IPA (i.e., Section 16-111.5B) savings goals as well as a *one-time* NTG based adjustment to Section 16-111.5B savings goals to occur prior to the start of the first Plan Year of an approved Section 16-111.5B Program. These decisions are both applicable with respect to the 2017 IPA Procurement Plan and related RFP process.¹ See Illinois Power Agency, ICC Docket No. 15-0541, 2016 Procurement Plan, 89 (September 28, 2015). The Commission should reconcile this inconsistency, and for the reasons set forth in Staff's Initial Comments (Staff Initial Comments, 25-26), do so by adopting Staff's proposed language for Section 6.2 (Staff BOE, Attachment C, 17).

¹ Specifically, the IPA's filed 2016 Procurement Plan requests approval of certain 2013 and 2014 Section 16-111.5B energy efficiency stakeholder consensus language to inform the RFPs developed by the utilities in early 2016 for the solicitation of Section 16-111.5B energy efficiency programs to be included in the 2017 Procurement Plan. Illinois Power Agency, ICC Docket No. 15-0541, 2016 Procurement Plan, 89 (September 28, 2015).

1. Recommended Substitute Language for Exception No. 1

Staff respectfully requests that the Commission replace the ALJPO Policy Manual language with the language set forth in the Policy Manual filed as Attachment B to Staff's BOE, and Staff proposes the following language changes to pages 15-16 of the ALJPO:

V. Commission Analysis and Conclusion

...

The Commission notes that all parties but Staff are in agreement that the Policy Manual as filed with the Petition reflects good policy, including with respect to the contested issues described above. ~~While Staff raises certain concerns regarding how the Policy Manual could be clarified or further improved upon and raises issues not listed in the Non-Consensus Exhibit attached as Exhibit B to the AG's Petition, the Commission is not convinced that any changes are needed at this time.~~ Importantly, the Commission notes that many of these issues are set to be addressed as part of the Version 2.0 Discussion Framework and Staff and any other party will have the opportunity to raise all of their recommendations regarding any proposed edits in that context on these and other issues parties Staff chooses to raise. Staff and all parties also retain the ability to suggest any proposed edits in any future docket in which those concerns may be at issue. ~~The Program Administrators and CES have demonstrated that a~~ Adoption of the Policy Manual derived from the year-long collaborative process will further the best interests of ratepayers and the continued evolution of energy efficiency policy in the State of Illinois. Moreover, it is consistent with previous Commission Orders that have encouraged Program Administrators and stakeholders to resolve issues related to the delivery and evaluation of the ratepayer-funded programs through this informal process, and then bring them to the Commission for approval. The fact that the AG, Ameren, ComEd, Nicor Gas, PG/NSG, DCEO, CUB, ELPC and NRDC all agree and support the ~~consensus~~ Policy Manual Version 1.0 filed as AG Exhibit A with the Petition is not insignificant. That being said, agreement among certain parties does not remove the Commission's statutory obligation to carefully review the policies to ensure they are consistent with Illinois statutes and reflect sound policies that serve the public interest and is given considerable weight in making any changes to the Policy Manual.

The Commission finds Staff's proposals to be reasonable and they are hereby adopted. As Staff correctly points out, there is no guarantee that parties will resolve differences of opinion through the Version 2.0 Discussion Framework. The Commission encourages all parties to make best efforts to

reach complete consensus with respect to all issues prior to submission of a Policy Manual Version 2.0 to the Commission. The Commission notes that adoption of Staff's proposed language changes to the Policy Manual in this proceeding does not foreclose parties from further addressing and refining that policy language during the Policy Manual Version 2.0 Discussion Framework. The Commission finds that Staff's proposed changes provide greater clarity and certainty to all parties and will likely serve to reduce litigation in the future.

The Commission agrees with ~~Staff~~~~the Program Administrators and CES~~ that the Policy Manual as revised by Staff ~~filed with the Petition~~ complies with the directive to "ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated." The Policy Manual as filed reflects the considerable efforts and input of various subject matter experts, including Program Administrators, CES and Staff. Accordingly, the Commission approves and adopts the Illinois Energy Efficiency Policy Manual Version 1.0 filed as Attachment B to Staff's BOE~~Exhibit A to the AG's Petition~~ in this docket ~~with only two minor changes. As Staff points out in its Initial Comments, there is a typographical error in Section 7.1, and the word "Manal" should be replaced with "Manual". Additionally, the Commission also adopts Staff's suggested edit to Section 10.2, which provides more consistency between the draft EM&V Report review times. The Illinois Energy Efficiency Policy Manual Version 1.0 is adopted including these minor changes, as reflected in the attachment to this Order.~~

B. Exception No. 2: Clarification of Staff Positions

The ALJPO does not provide an accurate and detailed summary of Staff's positions with respect to all issues, and thus Staff requests the ALJPO be modified to accurately reflect Staff's positions consistent with Staff's Initial and Reply Comments. Staff recommends the summary of Staff Positions sections in the ALJPO be modified consistent with the proposed language reflected in Attachment A.

C. Exception No. 3: Revision to Policy Manual Date Completed

The text, "Completed: July 14, 2015," on the cover page of the ALJPO Policy Manual should be updated to reflect the fact that the Policy Manual has been modified since that date. As reflected in Attachments B and C to Staff's BOE, Staff recommends

the date be revised to December 4, 2015, as follows: "Completed: ~~July 14~~December 4, 2015."

III. CONCLUSION

WHEREFORE, Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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December 4, 2015